

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE
KENT COUNTY COURTHOUSE
DOVER, DELAWARE 19901
PHONE: (302) 739-4618**

**CHARLES W. WELCH, III
JUDGE**

March 30, 2011

Ms. Carletta N. Moore
20 2nd Street
Frederica, DE 19946

Michael P. Morton, Esq.
1203 N. Orange Street
Wilmington, DE 19801

RE: Carletta N. Moore v. Cornell Management Corp.
C.A.No.: CPU5-10-002041
(JP Court Appeal)

Decision on Motion to Vacate Default Judgment

Dear Ms. Moore and Mr. Morton:

On May 12, 2010, Appellee, Plaintiff-Below, Cornell Management Corporation ("Plaintiff"), filed a complaint for a debt action demanding judgment against Appellant, Defendant-Below, Carletta Moore ("Defendant"), in the Justice of the Peace Court. A trial was held on August 26, 2010. The Justice of the Peace Court entered a judgment in favor of the plaintiff in the amount of \$687.75, plus court costs and post-judgment interest.

The defendant appealed the Justice of the Peace Court's decision to this court for a trial de novo on September 9, 2010. The plaintiff filed a complaint with this court on October 12, 2010, and attempted to serve the defendant by sending a copy of the complaint to her at 127 Forge Drive, Dover, DE 19904. A default judgment was entered against the defendant on January 6, 2011, as a result of her failure to file a response to the plaintiff's complaint. The defendant filed this Motion to Vacate Default Judgment pursuant to Court of Common Pleas Civil Rule 55(c) on January 13, 2011. The motion alleges that she never received a copy of the plaintiff's complaint. The court held a hearing on the motion on February 21, 2011. This correspondence constitutes the court's decision on the motion. Defendant's Motion to Vacate Default Judgment is granted.

The defendant contends that she did not receive a copy of the plaintiff's complaint because the plaintiff mailed it to the wrong address. The defendant informed the court that her correct address at the time of attempted service was 127 Old Forge Drive, Dover, DE. The plaintiff concedes that it mailed its complaint to the wrong address.

"When an appeal from the Justice of the Peace Court is entered in the Court of Common Pleas, 'the pleadings and proceedings thereafter shall be as in other civil actions commenced in the Court.'" *Hudson v. Jackson*, 2010 WL 3103671, at *1 (Del. Com. Pl.) (quoting 10 *Del. C.* § 9572). In this regard, a plaintiff must serve a copy of the complaint on the defendant within twenty days of service of the defendant's notice of appeal. CCP Civ. R. 72.3(a).

Furthermore, Court of Common Pleas Civil Rule 55(c) provides that the court may vacate a default judgment in accordance with Civil Rule 60(b). Court of Common Pleas Civil Rule 60(b) states that relief from judgment can be granted for mistake, inadvertence, excusable neglect, newly discovered evidence, fraud, or the judgment is void. In addition, Civil Rule 60(b) permits relief from judgment if the judgment has been satisfied, released or discharged or for any other reason justifying relief from the operation of the judgment.

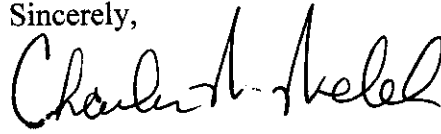
In this case, the plaintiff failed to comply with Civil Rule 72.3(a). The plaintiff admits that it did not serve the defendant with its complaint within twenty days of being served with defendant's notice of appeal because it was sent to the wrong address. Therefore, the judgment is void. The Delaware Supreme Court has stated that a void judgment for Rule 60(b) purposes is one that is "legally ineffective from its inception." *Credit Acceptance Corp. v. Cason*, 2008 WL 4379594, at *1 (Del. Com. Pl.) (citing *C.I.T. Group/Equip. Fin., Inc. v. Chaney*, 1991 WL 18092, at *1 (Del. Super. Ct.); *E.J. Hollingsworth Co., v. Cesarini*, 129 A.2d 768, 769 (Del. Super. Ct. 1957)). "Void judgments are defined in terms of exceeding jurisdiction over the parties or subject matter; improper notice; no delegation of power by the State; no valid exercise of process, and failure to sit at a time and place as required by law." *Id.* (citing *Taylor v. Hatzel & Buehler*, 258 A.2d 905, 908 (Del. 1969)). In this case, the defendant did not

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receive proper notice of the plaintiff's complaint. As a result, the default judgment entered against her is void as contemplated by Civil Rule 60(b) for improper notice. Defendant's Motion to Vacate Default Judgment is granted.

IT IS SO ORDERED.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles W. Welch, III". The signature is fluid and cursive, with the first name "Charles" being the most prominent.

Charles W. Welch, III

CWW:mek